

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BLACK BARRY J SMITH, SR,

Plaintiff,

Case No. 24-cv-386-bhl

v.

COMMUNITY CARE INC and GUARDIANTRAC LLC d/b/a
GT INDEPENDENCE,

Defendants.

ORDER DISMISSING CASE

On March 29, 2024, Plaintiff “Black” Barry J. Smith Sr., proceeding *pro se*, filed a complaint against Defendants Community Care, Inc. and Guardiantrac LLC. (ECF No. 1.) He paid the filing fee that same day. Smith’s complaint asserts three claims: (1) Defendants, “by their White agents,” have violated Smith’s Thirteenth and Fourteenth Amendment rights by refusing to honor an alleged employment contract “because he is Black”; (2) Defendants violated 42 U.S.C. § 1981 by refusing to honor the same employment contract “because he is Black”; and (3) Defendants violated the Fair Labor Standards Act (FLSA) by refusing to pay Smith for hours and overtime worked. (*Id.*) This is the third substantively similar complaint Smith has filed in this district against these defendants and only the latest in a long line of frivolous lawsuits in which Smith alleges violations of his constitutional rights. As explained below, Smith’s complaint is barred by order of Chief Judge Pamela Pepper and will be dismissed.

Smith’s history of litigation in this district dates back to 1987, when he filed a housing discrimination lawsuit that was dismissed by Judge John Reynolds. *See Smith v. U.S. Cong.*, No. 19-cv-1001-pp, 2019 WL 6037487, at *1 (E.D. Wis. Nov. 14, 2019) (citing *Smith v. Nat’l Corp.*, Case No. 87-cv-1300). Apparently angry at the dismissal, Smith called the FBI and threatened to kill Judge Reynolds with a 16th century Jewish sword, which led to a conviction under 18 U.S.C. § 115(a)(1)(B). *See United States v. Smith*, 928 F.2d 707, 1991 WL 36269, at *1 (7th Cir. 1991) (unpublished table decision). Following his conviction, Smith filed seven different civil rights

lawsuits in this district over a span of twelve years, alleging various violations of his constitutional rights “due to his status as a descendant of slaves and his status as a convicted felon.” *U.S. Cong.*, 2019 WL 6037487, at *2. Each lawsuit was dismissed. *Id.*

On November 14, 2019, Chief Judge Pamela Pepper dismissed Smith’s seventh lawsuit and barred him from filing any further lawsuits in this district “bringing claims (in any form) arising out of his status as a descendant of slaves or his status as a convicted felon.” *Id.* at *11. Chief Judge Pepper authorized Smith to move the court to modify or rescind the filing bar no earlier than three years from the date of the order (November 14, 2022). *Id.* Smith appealed Chief Judge Pepper’s order, but the bar remains in place. Indeed, the Seventh Circuit not only affirmed the filing bar in 2021, it also fined Smith \$2,000. *Smith v. U.S. Cong.*, 840 F. App’x 31 (7th Cir. 2021). After paying that fine, Smith filed a further frivolous challenge to the filing bar and was further sanctioned by the Seventh Circuit, which fined him “\$5,000 for his continued vexatious litigation” and ordered that “the clerks of all federal courts in this circuit shall return unfiled any papers submitted . . . by . . . Smith unless and until he pays the full sanction that has been imposed against him.” *Smith v. U.S. Cong.*, No. 22-2592, 2023 WL 3581990, at *2 (7th Cir. 2023). Smith satisfied the monetary portion of this sanction on March 7, 2024. Received Payment, *Smith v. U.S. Cong.*, No. 22-2592 (7th Cir. Mar. 7, 2024), ECF No. 27.

On March 25, 2024, Smith filed a “Motion to Comply with Judge Pepper’s Perpetual Restricted Filer Order . . .” asking Chief Judge Pepper to rescind the filing bar entirely, retroactive to November 15, 2022. (Case No. 19-cv-1001-pp, ECF No. 34.) That motion has not been granted, however, and remains pending with the Chief Judge. Unless and until Chief Judge Pepper relieves Smith from the November 14, 2019 order, Smith’s filing bar remains in place.

Notwithstanding Chief Judge Pepper’s order, Smith has continued to try to file lawsuits in this district against Community Care, Inc. and Guardiantrac LLC. His first effort was dismissed without prejudice by Judge J.P. Stadtmueller on November 17, 2020. *Smith v. Cnty. Care, Inc.*, No. 20-cv-1482-jps, 2020 WL 6743195 (E.D. Wis. Nov. 17, 2020). Judge Stadtmueller concluded that Smith’s amended complaint alleging 42 U.S.C. § 1981 and FLSA violations was barred by Judge Pepper’s order, noting that Smith claimed that “but for Smith . . . being [a] Black descendant[] of American Slaves, CCI would not be refusing and failing to allow . . . Smith to enforce [his] contract with CCI.” *Id.* at *1. Smith appealed that dismissal, but the Seventh Circuit affirmed, holding that Judge Pepper’s filing bar “blocks any suit, like this one, that includes a claim

arising out of Smith’s race, regardless of how he labels it.” *Smith v. Cnty. Care, Inc.*, No. 20-3363, 2022 WL 1436799, at *1 (7th Cir. 2022). On January 29, 2024, Smith filed a second lawsuit alleging three claims substantively identical to the present complaint. (See Case No. 24-cv-121-la, ECF No. 1). Judge Lynn Adelman dismissed that case pursuant to the Seventh Circuit’s May 2023 order barring Smith from filing any papers in this circuit until he paid the \$5,000 fine. (*Id.*, ECF No. 12.) After paying the fine, Smith moved for relief from the dismissal order, but Judge Adelman denied his request. (*Id.*, ECF Nos. 14 & 21.)

Smith’s latest complaint is destined for the same result as his prior two attempts. As the Seventh Circuit confirmed, Chief Judge Pepper’s filing bar—which remains in effect—bars Smith from filing any suit in this district that includes a claim arising out of his race. Smith’s first and second claims explicitly arise out of his race. He claims that Defendants refuse to pay him “because he is Black.” (ECF No. 1 at 2–3.) Accordingly, his complaint falls directly under Chief Judge Pepper’s filing bar.

Chief Judge Pepper warned Smith that if he violated the filing bar, “he may be subject to sanctions imposed by any judge in this district.” *U.S. Cong.*, 2019 WL 6037487, at *11. This is now the third time Smith has filed a substantively similar lawsuit against Defendants and the third time his complaint has been dismissed for violating a filing bar. Further sanctions may be required to dissuade Smith from continuing his abusive filing practices in this district. Given that Smith has a motion pending before Chief Judge Pepper, the Court will refrain from imposing additional sanctions at this time and will, instead, inform the Chief Judge of this latest improper filing and allow her to determine if and what further sanctions are necessary.

Accordingly,

IT IS HEREBY ORDERED that Smith’s complaint, ECF No. 1, is **DISMISSED without prejudice**. The Clerk is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin on April 5, 2024.

s/ *Brett H. Ludwig*

BRETT H. LUDWIG
United States District Judge